



Serial No.: 09/083,681 Docket No. 486.37843CC2

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In re Application of:

Wojick et al.

Serial No.: 09/083,681

Filed: May 22, 1998

Group Art Unit: 2163

Examiner: Stamber, E.

For: **SYSTEM FOR MANAGING CUSTOMER ORDERS AND METHOD OF IMPLEMENTATION**

**APPELLANT'S REPLY BRIEF UNDER**  
**37 C.F.R. §1.193(b)(1)**

*Assistant Commissioner of Patents*  
*Washington, D.C. 20231*

Sir:

This is an Appellant's Reply Brief in response to the Examiner's Answer mailed November 6, 2001 (Paper No. 16) and having a response due on January 7, 2002, (January 6, 2002 being a Sunday). Therefore, this Reply Brief is timely filed by January 7, 2002. However, if any further fees are required in connection with the filing of this Appeal Brief, please charge Deposit Account No. 01-2135 for Antonelli, Terry, Stout & Kraus, LLP Account No. 01-2135 (Case No. 486.37843CC2)

**37 CFR §1.193(b)(1)**

Under 37 CFR §1.193(b)(1) the Appellant is entitled to submit a Reply Brief within two months of receiving an Examiner's answer. The identification of new issues or arguments raised by the Examiner and limiting the scope of the Reply Brief to new issues or arguments raised is not required. Therefore, the Appellant will address all

issues raised by the Examiner as they appear in the Examiner's Answer. However, All arguments and issues discussed by the Appellant in the Appeal Brief filed August 23, 2001 are maintained by the Appellant.

The Examiner is requested to acknowledge receipt and enter this reply brief or withdraw the final rejection and reopen prosecution.

(1) ***Real Party in Interest***

The Appellant and the Examiner are in agreement regarding the real party in interest.

(1) ***Related Appeals and Interferences***

The Appellant and the Examiner are in agreement regarding related Appeals and Interferences.

(1) ***Status of Claims***

The Appellant and the Examiner are in agreement regarding the status of the claims.

(1) ***Status of Amendments After Final***

The Appellant agrees with the Examiner that the response filed on October 26, 1998, did not amend any claims or propose the addition of new claims.

(1) **Summary of the Invention**

The Appellant and the Examiner are in agreement regarding the summary of the invention.

(1) **Issues**

The Appellant and the Examiner are in agreement regarding the issues as stated in the Appeal Brief filed August 23, 2001.

(1) **Groupings of Claims**

The Appellant and the Examiner are not in agreement regarding the grouping of the claims. It is respectfully asserted that since the Examiner has agreed with the appellant regarding the issues on appeal and claims 9, 19 and 20, claims 10-16 and claims 17-18 stand rejected over different prior art and in particular over different primary references then claims 9, 19 and 20 stand and fall together, claims 10-16 stand and fall together, and claims 17 and 18 stand and fall together.

(1) **Claims Appealed**

The Appellant and the Examiner are in agreement that the claims presented in the Appeal Brief are correct.

(9) **Prior Art of Record**

The Appellant and the Examiner are in agreement that

Shavit et al., U.S. Patent No. 4,799,156;

Schlafly, U.S. Patent No. 4,734,858, and

Roach et al., U.S. Patent No. 5,434,394,

are relied upon in the rejection of claims under appeal.

**(10) Ground of Rejection**

The Appellant and the Examiner are in agreement that Claims 9, 19 and 20 stand rejected under 35 USC §103 as unpatentable over Shavit et al., U.S. Patent No. 4,799,156. Claims 10-16 stand rejected under 35 USC §103 as unpatentable over Roach et al., U.S. Patent No. 5,434,394 in view of Shavit et al., U.S. Patent No. 4,799,156. Claims 17-18 stand rejected under 35 USC §103 as unpatentable over Schlafly, U.S. Patent No. 4,734,858, in view of Roach et al., U.S. Patent No. 5,434,394, and further in view of Shavit et al., U.S. Patent No. 4,799,156.

**(11) Response to Argument**

The Appellant must respectfully traverse the Examiner's assertions made in item 11 entitled "Response to Argument". Each issue raised by the Examiner will be discussed below.

In item 11(A) and 11(B) on pages 18 and 19 of the Examiner's Answer the Examiner asserts that Shavit et al. discloses the claimed element of a "blanket vendor order or agreement" in claim 8, it to and column 12, lines 60 - 61. This assertion is respectfully traversed. Further, the Examiner asserts that since the specification does

not explicitly provide a definition for the term that any definition may be applied. This assertion is also respectfully traversed.

Claim 8 of Shavit et al. recites "wherein the sellers include distributors, wholesalers, and suppliers, and wherein the users in addition to sellers, buyers, freight service providers, and financial service providers, comprising agents, information services, commercial services, and public databases." Nothing in claim 8 appears relevant to a blanket vendor order.

Column 12, lines 60 - 61 of Shavit et al. recites A... location (RFQ), review proposals, enter an umbrella agreement, enter/command/confirm an order, inquiry and ..." It is respectfully asserted that a blanket vendor order is not the same as an order or an umbrella agreement. A blanket vendor order is an order which covers (blankets) the sale of merchandise for a number of items for possible delivery over an extended period of time. An example of a blanket vendor order is an agreement to supply all goods manufactured by a vendor over a specified time, such as all widgets produced by a factory within a calendar year. Other types of blanket vendor orders are also possible. Thus, unlike an order, a blanket vendor order may not be limited by time or amount.

Therefore, the appellant respectfully requests that the term "blanket vendor order or agreement" be given its plain meaning as required by In re Zeltz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) and as exemplified by the appellant's discussion previously provided.

In item 11(C) on pages 19 and 20 of the Examiner's Answer the Examiner asserts that the appellant has misinterpreted the plethora of citations which being

Examiner asserts disclose the entering of a blanket vendor order in an electronic catalog. In the appellant's appeal brief on pages 8 through 10 the appellant went through each and every citation supplied by the Examiner and noted that none of them either taking singly or in combination disclose or suggest the claimed invention. Therefore, the appellant hereby incorporates the arguments from the appeal brief into this reply brief and continues to assert that none of the citations supplied by the Examiner teach the claimed element.

In item 11(D) on pages 19 and 20 of the Examiner's Answer the Examiner asserts that claims 10 - 16 do not claim the limitations of creating an electronic catalog and based on a blanket vendor agreement. The Examiner is incorrect. Claim 10 states "means for creating an electronic catalog based on a blanket vendor agreement" in line six of claim 10.

In item 11(D) and 11(E) on pages 20 - 21 of the Examiner's Answer the Examiner asserts that Shavit et al. discloses the creating of a blanket vendor order and entering the same into an electronic catalog. For the reasons previously supplied and incorporated herein by reference, the Examiner is incorrect. None of the prior art relied upon discloses or suggest a blanket vendor order agreement.

In item 11(F) on pages 21 - 22 of the Examiner's Answer the Examiner refuses to supply a reference for all elements which the Examiner asserted as "well known". When the appellant makes a seasonable request challenging and assertion that an element is well-known in a claim, the Examiner has no choice but to supply such a

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reference as discussed in M.P.E.P. section 21 44.03. (In re Ahlert, 424 F.2d 1088, 165 USPQ 418 (CCPA 1970); In re Barr, 444 F.2d 588, 170 USPQ 330 (CCPA 1971)).

Assertions that elements are well-known were made regarding claims 9-16, 19 and 20. No reference(s) have been supplied to a seasonably made request for the same.


### CONCLUSION

In summary, it is submitted that for the reasons supplied above and in the Appellant's Appeal brief that claims 9, 19 and 20 are patentable over Shavit et al. under 35 USC §103, U.S. Patent No. 4,799,156, claims 10-16 are patentable over Roach et al., U.S. Patent No. 5,434,394 in view of Shavit et al. under 35 USC §103, U.S. Patent No. 4,799,156, and claims 17-18 are patentable over Schlafly, U.S. Patent No. 4,734,858, in view of Roach et al., U.S. Patent No. 5,434,394, and further in view of Shavit et al., U.S. Patent No. 4,799,156. under 35 USC §103..

It is respectfully requested that the Examiner's rejections of claims 9, 19 and 20 under 35 USC §103 as unpatentable over Shavit et al., U.S. Patent No. 4,799,156, claims 10-16 under 35 USC §103 as unpatentable over Roach et al., U.S. Patent No. 5,434,394 in view of Shavit et al., U.S. Patent No. 4,799,156, and claims 17-18 under 35 USC §103 as unpatentable over Schlafly, U.S. Patent No. 4,734,858, in view of Roach et al., U.S. Patent No. 5,434,394, and further in view of Shavit et al., U.S. Patent No. 4,799,156. be reversed.

Respectfully submitted,  
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